

Message Text

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NSC:BPASTOR
EUR/SOV:KBROWN
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OSD/ISA:SBUCKLEY
PM/DCA:CSTEINER
L/PM:MMATHESON
ACDA/NP:LWATSON

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C O N F I D E N T I A L STATE 197576

E.O. 11652: GDS

TAGS: PARM, UN, UR, US

SUBJECT: SOVIET STATEMENT ON PROTOCOL II TO THE TREATY OF
TLATELOLCO

REFS: (A) MEXICO 11936; (B) MEXICO 11193; (C) MEXICO 9163

1. WE APPRECIATE TRANSMITTAL OF RUSSIAN TEXT OF SOVIET
STATEMENT REFERRED TO IN REFTEL A AS QUOTE SOVIET STATEMENT
ACCOMPANYING RATIFICATION OF PROTOCOL II OF TLATELOLCO
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TREATY UNQUOTE. WE UNDERSTOOD THAT SOVIETS SIGNED, BUT
HAVE NOT YET RATIFIED PROTOCOL. PEASE ADVISE ASAP WHETHER
THIS IS CORRECT, AND, IF SO, ANY INFORMATION ON WHEN
RATIFICATION EXPECTED.

2. WE HAVE OBTAINED INFORMAL TRANSLATION OF STATEMENT;
HOWEVER, WE UNDERSTAND THAT OFFICIAL TRANSLATION WILL BE

CIRCULATED BY GOM AS DEPOSITARY OF THE TREATY TO ALL PARTIES TO THE TREATY AND THE PROTOCOLS WITHOUT WAITING FOR SOVIET ACTION ON RATIFICATION. PLEASE ADVISE IF THIS IS NOT CORRECT.

3. WHEN STATEMENT BECOMES AVAILABLE FORMALLY, WE INTEND TO REPLY TO CHALLENGE THOSE PORTIONS THEREOF WHICH ARE IN CONFLICT WITH NEGOTIATING HISTORY OF TREATY AS WELL AS FORMAL UNDERSTANDINGS PLACED ON RECORD BY US AT TIME OF OUR RATIFICATION OF PROTOCOL II. IT IS OUR INTENTION TO SUBMIT A FORMAL REPLY TO THE DEPOSITARY WITH A REQUEST TO CIRCULATE IT TO ALL SIGNATORIES TO THE TREATY AND THE PROTOCOLS (INCLUDING THE SOVIET UNION).

4. PROPOSED U.S. REPLY WILL BE ALONG FOLLOWING LINES:
BEGIN TEXT. WHILE THE GOVERNMENT OF THE UNITED STATES WELCOMES THE SIGNATURE BY THE SOVIET UNION OF ADDITIONAL PROTOCOL II TO THE TREATY, IT CANNOT AGREE WITH THE POSITION ASSERTED BY THE SOVIET UNION IN THE SECOND SENTENCE OF PARAGRAPH 5 OF ITS STATEMENT ON SIGNATURE "THAT PERMISSION FOR TRANSIT RIGHTS OF NUCLEAR WEAPONS IN ANY FORM WOULD CONTRADICT THE GOALS OF THE TREATY... AND WOULD BE INCOMPATIBLE WITH THE NON-NUCLEAR STATUS OF THE CONTRACTING PARTIES AND WITH THEIR OBLIGATIONS DEFINED IN ARTICLE I OF THE TREATY."

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5. THE NEGOTIATING RECORD OF THE TREATY MAKES CLEAR THAT THE TREATY DOES NOT HAVE THIS EFFECT. THE IDEA OF INCLUDING IN THE TREATY A PROHIBITION ON GRANTING SUCH TRANSIT AND TRANSPORT PRIVILEGES WAS EXPLICITLY REJECTED DURING THE NEGOTIATION OF THE TREATY. THE FINAL ACT OF THE FOURTH SESSION OF THE PREPARATORY COMMISSION CONTAINS THE FOLLOWING PERTINENT EXPLANATION:

"AT ITS FORTIETH PLENARY MEETING ON 7 FEBRUARY, THE PREPARATORY COMMISSION DECIDED TO PLACE ON RECORD THE CORRECT INTERPRETATION OF THE OMISSION, FROM ARTICLE I, PARAGRAPH 1, SUB-PARAGRAPH (B) OF THE TREATY, OF THE TERM "TRANSPORT" WHICH HAD APPEARED IN ONE OF THE ALTERNATIVE TESTS...THE COMMISSION ACCORDINGLY DECIDED TO INCLUDE THE FOLLOWING STATEMENT IN THE FINAL ACT:

"THE COMMISSION DEEMED IT UNNECESSARY TO INCLUDE THE TERM 'TRANSPORT' IN ARTICLE 1, CONCERNING 'OBLIGATIONS' FOR THE FOLLOWING REASONS:

"1. IF THE CARRIER IS ONE OF THE CONTRACTING PARTIES, TRANSPORT IS COVERED BY THE PROHIBITIONS EXPRESSLY LAID

DOWN IN THE REMAINING PROVISIONS OF ARTICLE 1 AND THERE IS NO NEED TO MENTION IT EXPRESSLY, SINCE THE ARTICLE PROHIBITS 'ANY FORM OF POSSESSION OF ANY NUCLEAR WEAPON, DIRECTLY OR INDIRECTLY, BY THE PARTIES THEMSELVES, BY ANYONE ON THEIR BEHALF, OR IN ANY OTHER WAY.'

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2. IF THE CARRIER IS A STATE NOT A PARTY TO THE TREATY TRANSPORT IS IDENTICAL WITH 'TRANSIT,' WHICH, IN THE ABSENCE OF ANY PROVISION IN THE TREATY, MUST BE UNDERSTOOD TO BE GOVERNED BY THE PRINCIPLES AND RULES OF INTERNATIONAL LAW; ACCORDING TO THESE PRINCIPLES AND RULES IT IS FOR THE TERRITORIAL STATE, IN THE FREE EXERCISE OF ITS SOVEREIGNTY, TO GRANT OR DENY PERMISSION

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FOR SUCH TRANSIT, IN EACH INDIVIDUAL CASE, UPON APPLICATION BY THE STATE INTERESTED IN EFFECTING THE TRANSIT UNLESS SOME OTHER ARRANGEMENT HAS BEEN REACHED IN A TREATY BETWEEN SUCH STATES."

6. IN ITS DECLARATION ON RATIFICATION OF ADDITIONAL PROTOCOL II, THE UNITED STATES MADE SPECIFIC REFERENCE TO THIS INTERPRETATION BY THE PREPARATORY COMMISSION, UPON WHICH IT RELIED AND CONTINUES TO RELY. END TEXT.

7. WE HAVE NOT YET DETERMINED WHETHER SOVIET STATEMENT, IF ISSUED AT TIME OF RATIFICATION, WOULD HAVE TO BE TREATED AS RESERVATION, AS SUGGESTED IN REF B; IF SO, WE MIGHT FIND IT NECESSARY AT THAT POINT TO ADD TO ABOVE LANGUAGE FORMALLY REJECTING SOVIET STATEMENT.

8. WE WOULD APPRECIATE YOUR ADVISING APPROPRIATE GOM OR OPANAL OFFICIALS OF PROPOSED US REPLY TO SOVIET STATEMENT AND SEEKING THEIR COOPERATION IN DISSAUDING SOVIETS FROM REPEATING STATEMENT UPON RATIFICATION OF THE PROTOCOL.

9. FOR GENEVA: NEIDLE SHOULD ADVISE TIMERBAEV ASAP OF OUR INTENTIONS ON THIS MATTER, INCLUDING DRAFT TEXT, ASK HIM TO INFORM APPROPRIATE OFFICIALS IN MOSCOW, URGE THAT SOVIETS REFRAIN FROM REPEATING THIS PORTION OF STATEMENT AT TIME OF THEIR RATIFICATION, AND ASK SOVIETS TO ADVISE US BEFORE RATIFICATION OF THEIR INTENTIONS.

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